

BEFORE THE BOARD OF REALTY REGULATION
DEPARTMENT OF LABOR AND INDUSTRY
STATE OF MONTANA

In the matter of the proposed amendment)	NOTICE OF PUBLIC HEARING
of ARM 24.210.401 fees, 24.210.641)	ON PROPOSED AMENDMENT
unprofessional conduct, 24.210.667)	AND ADOPTION
continuing education, 24.210.1016)	
timeshare course, 24.210.1018 timeshare)	
exam, 24.210.1020 timeshare renewal, and)	
adoption of NEW RULE I fee schedule)	

TO: All Concerned Persons

1. On July 26, 2007, at 9:00 a.m., a public hearing will be held in room 439, 301 South Park Avenue, Helena, Montana to consider the proposed amendment and adoption of the above-stated rules.

2. The Department of Labor and Industry (department) will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the Board of Realty Regulation (board) no later than 5:00 p.m., on July 20, 2007, to advise us of the nature of the accommodation that you need. Please contact Barb McAlmond, Board of Realty Regulation, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; telephone (406) 841-2325; Montana Relay 1-800-253-4091; TDD (406) 444-2978; facsimile (406) 841-2323; e-mail dlibsdrre@mt.gov.

3. The rules proposed to be amended provide as follows, stricken matter interlined, new matter underlined:

24.210.401 FEE SCHEDULE (1) Except as otherwise provided by statute or rule, the following fees are required by the board for each of the licensing services listed ~~below in this rule~~. All fees are subject to change by the board, within the limitations provided in 37-51-311, MCA.

(2) through (19) remain the same.

(20) Each additional course hour-option from one course outline 20

(20) remains the same but is renumbered (21).

AUTH: 37-1-131, 37-1-134, 37-51-203, ~~37-51-204~~, MCA

IMP: 37-1-134, 37-1-141, 37-51-202, 37-51-204, 37-51-207, 37-51-303, 37-51-311, MCA

REASON: The board is statutorily required to set fees that are commensurate with costs per 37-1-134, MCA. It is reasonably necessary to add this fee to cover the administrative costs involved in logging and tracking these additional course options for approved continuing education courses, including staff time for input, database

maintenance, tracking, and renewal. The board receives approximately ten requests per year from instructors or course providers to change the course hour options of board approved courses. The board estimates this new fee will generate an additional \$200 in annual revenue. Authority cites are being amended to provide the complete sources of the board's rulemaking authority.

24.210.641 GROUND FOR LICENSE DISCIPLINE - GENERAL PROVISIONS - UNPROFESSIONAL CONDUCT (1) through (3)(g) remain the same.

(h) Licensees shall not knowingly enter, or willfully continue in, any transaction, either as a principal or agent, wherein a purpose or objective of the licensee or his principal is to commit any of the following acts: use, or conspire with others to obtain, inflated property appraisals; influence others to purchase property for another person in order to circumvent credit and down payment requirements or other limitations imposed by lenders, the Department of Housing and Urban Development or the Veterans Administration; file an application to refinance a loan for the purpose of drawing out the equity, when prohibited by lenders, ~~the department of HUD or VA regulations~~; or acquire as an investor, or personally, properties subject to a loan guaranteed or insured by ~~the department of HUD~~, collect rents thereon, while purposely failing to make mortgage payments on the property;

(i) through (ad) remain the same.

(ae) Licensees must comply with all completion and reporting requirements for continuing education as established by the board- ;

(af) A licensee shall not engage in or conduct business as a real estate licensee, or advertise as a real estate licensee, or engage in or conduct the business of a real estate licensee at a time when the licensee's real estate license has expired or is on inactive status.

(4) remains the same.

AUTH: 37-1-131, 37-1-136, ~~37-1-306~~, 37-1-319, ~~37-51-202~~, 37-51-203, ~~37-51-321~~, MCA

IMP: 37-1-141, 37-1-306, 37-1-307, 37-1-312, 37-1-316, 37-1-319, 37-51-102, ~~37-51-201~~, 37-51-202, 37-51-313, 37-51-314, 37-51-321, 37-51-512, MCA

REASON: It is reasonably necessary to amend this rule to specify that practicing with an expired license or while a license is on inactive status constitutes unprofessional conduct. Per 37-1-141, MCA, a licensee may reinstate an expired license prior to termination, but may not practice with an expired license. This amendment allows the board to discipline a licensee who performs licensed activities after failing to renew and meet education requirements but still within the two-year expiration period prior to license termination. The amendment also allows the board to discipline a licensee who continues to perform licensed activity after placing a license on inactive status. The board is amending the authority and implementation cites to accurately reflect all statutes implemented through the rule and to provide the complete sources of the board's rulemaking authority. The rule is further amended to delete unnecessary language.

24.210.667 CONTINUING REAL ESTATE EDUCATION (1) through (15) remain the same.

(16) The board may grant continuing education credit to board members for actively preparing and participating in board meetings. Credit will be limited to no more than three hours of credit per meeting.

AUTH: 37-1-131, 37-1-136, ~~37-1-306~~, 37-1-319, 37-51-203, ~~37-51-204~~, MCA

IMP: 37-1-131, 37-1-141, 37-1-306, 37-1-319, 37-51-202, ~~37-51-203~~, 37-51-204, MCA

REASON: It is reasonably necessary to amend this rule to allow the board members to obtain a minimal amount of continuing education credit for board meeting preparation and attendance. Board members spend in excess of eight hours preparing for each board meeting by reviewing applications, considering numerous complaints with many legal and practice issues, and reviewing education program offerings to determine appropriateness for approval. Board members devote a great deal of time in preparing for and attending board meetings held every six to eight weeks and the board considers these duties equivalent to those obtained at a legal or practice issues education program.

24.210.1016 TIMESHARE COURSE OF EDUCATION REQUIRED FOR LICENSURE (1) remains the same.

(2) The board shall provide a correspondence course equivalent to eight classroom hours of instruction ~~and otherwise meeting the requirements of 37-53-501, MCA~~. The course is available from the board office upon application and payment of the required fee, ~~\$25~~. Persons taking the course must file an affidavit of completion included with the course packet prior to receiving a certificate of completion or taking the required examination for licensure.

(3) remains the same.

AUTH: 37-1-131, 37-53-104, 37-53-301, MCA

IMP: 37-53-301, MCA

REASON: It is reasonably necessary to amend this rule to relocate all timeshare fees to one fee rule (New Rule I) for convenience and to comply with ARM fee schedule formatting. The board is also amending this rule to delete reference to a repealed statute.

24.210.1018 TIMESHARE EXAMINATION REQUIREMENTS FOR LICENSURE (1) remains the same.

(2) Application to take the examination shall be made to the board in writing and shall be received no less than 15 days prior to the date of examination, ~~accompanied by a~~ with the required fee of \$35, which is not refundable.

(3) and (4) remain the same.

AUTH: 37-1-131, 37-53-104, MCA

IMP: 37-53-301, MCA

REASON: It is reasonable and necessary to amend this rule to relocate all timeshare fees to one fee rule (New Rule I) for convenience and to comply with ARM fee schedule formatting.

24.210.1020 RENEWALS (1) remains the same.

~~(2) Licenses and certificates of completion for timeshare brokers and salespersons shall be renewed by the date set by ARM 24.101.413. Include payment of the required fee, and, except as contained in ARM 24.210.1003 renewal~~
All renewals shall include a typewritten, or printed, and sworn update to the personal disclosure statement. Incomplete renewal forms or renewals without the personal disclosure statement will not be accepted and will be returned to the licensee. Any form returned to the licensee must be properly completed and resubmitted before the renewal deadline or late renewal fees will be required.

(3) remains the same.

AUTH: 37-1-131, 37-53-104, MCA

IMP: 37-1-131, 37-1-141, ~~37-53-104~~, MCA

REASON: It is reasonably necessary to amend this rule to coincide with ARM 24.101.413, the department renewal rule as the department has set an October 31 annual renewal deadline for all timeshare licensees. Additionally, the board is amending this rule to clarify that incomplete renewals will not be accepted and explain what is expected of licensees when incomplete applications are received. The board is amending the implementation cites to accurately reflect all statutes implemented through the rule.

4. The proposed new rule provides as follows:

NEW RULE I FEE SCHEDULE (1) Except as otherwise provided by statute or rule, the following fees are required by the board for each of the licensing services listed in this rule.

(2) Fees are deemed earned by the board upon receipt and not refundable.

(3) For initial filing of an application for registration of the sale of a timeshare	\$500
(4) For an amendment of registration of the sale of a timeshare	200
(5) For the renewal of registration of the sale of a timeshare	200
(6) For each original timeshare broker license application	35
(7) For each timeshare broker license renewal	35
(8) For each original timeshare salesperson license application	15
(9) For each timeshare salesperson license renewal	15
(10) For each timeshare correspondence course	25
(11) For the original exam registration and any subsequent exam registration	35

AUTH: 37-1-131, 37-1-134, 37-53-104, MCA

IMP: 37-1-134, 37-1-141, 37-53-201, 37-53-202, 37-53-203, 37-53-204, 37-53-301, MCA

REASON: The board determined it is reasonably necessary to propose this new rule to set forth all timeshare fees in a single rule for convenience and ease of use. The fees for timeshare registration were previously set forth in statute at 37-53-103, MCA, which was repealed by the 2005 Montana Legislature through House Bill 182 (Chapter 467, Laws of 2005). In addition, the board is striking the fees for the board's timeshare correspondence course and for timeshare licensure examinations from ARM 24.210.1016 and 24.210.1018 and including them in this new rule. No new or amended fees are proposed and the amendment results in no fiscal impact.

5. Concerned persons may present their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to the Board of Realty Regulation, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513, by facsimile to (406) 841-2323, or by e-mail to dlibsdrre@mt.gov, and must be received no later than 5:00 p.m., August 3, 2007.

6. An electronic copy of this Notice of Public Hearing is available through the department and board's site on the World Wide Web at www.realestate.mt.gov. The department strives to make the electronic copy of this Notice conform to the official version of the Notice, as printed in the Montana Administrative Register, but advises all concerned persons that in the event of a discrepancy between the official printed text of the Notice and the electronic version of the Notice, only the official printed text will be considered. In addition, although the department strives to keep its web site accessible at all times, concerned persons should be aware that the web site may be unavailable during some periods, due to system maintenance or technical problems, and that technical difficulties in accessing or posting to the e-mail address do not excuse late submission of comments.

7. The board maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this board. Persons who wish to have their name added to the list shall make a written request which includes the name and mailing address of the person to receive notices and specifies that the person wishes to receive notices regarding all Board of Realty Regulation administrative rulemaking proceedings or other administrative proceedings. Such written request may be mailed or delivered to the Board of Realty Regulation, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513, faxed to the office at (406) 841-2323, e-mailed to dlibsdrre@mt.gov, or made by completing a request form at any rules hearing held by the agency.

8. The bill sponsor notice requirements of 2-4-302, MCA, do not apply.

9. Kathy Lubke, Rules Unit Supervisor, has been designated to preside over and conduct this hearing.

BOARD OF REALTY REGULATION
TEDDY BEEBE, CHAIRPERSON

/s/ DARCEE L. MOE
Darcee L. Moe
Alternate Rule Reviewer

/s/ KEITH KELLY
Keith Kelly, Commissioner
DEPARTMENT OF LABOR AND INDUSTRY

Certified to the Secretary of State June 25, 2007